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SUBJECT: THE PURGE OF THE SLOVAK JUDICIARY

REF: A) BRATISLAVA 314; B) BRATISLAVA 289; C) BRATISLAVA 282; D) BRATISLAVA
256; E) BRATISLAVA 248; F) BRATISLAVA 215; G) BRATISLAVA 166; H) BRATISLAVA
47; I) 08 BRATISLAVA 407; J) 08 BRATISLAVA 334

CLASSIFIED BY: Keith A. Eddins, CDA, State.
REASON: 1.4 (b), (d)

¶1. (U) Introduction and Summary: Negative trends in the Slovak judiciary (refs a-j) have intensified and accelerated since the June election of former Justice Minister Stefan Harabin to the position of Chief Justice of the Slovak Supreme Court. On what seems to be a daily basis, experienced judges with good records are suspended for speaking out against the misuse of power by Harabin and his cronies. The headline of Slovakia's major daily SME today reads: "Judge is sanctioned for her opinion." An accompanying op-ed suggests that November 17 commemorations should be cancelled because if a judge can be fired for speaking publicly about problems in the judiciary, the events of November 1989 might as well have never happened.

¶2. (U) In Slovakia, judges are working in a climate of fear and therefore more and more are ruling as instructed in sensitive cases. Judges who have been criminally prosecuted for corruption are still on the bench, while others face immediate suspension for flimsy or fabricated complaints -- or for their speech. Judges are routinely awarding huge sums to political figures who claim that media coverage -- or in the recent case of the Prime Minister, a cartoon-- has offended their dignity (ref d). Chief Justice Harabin -- despite strong opposition from his colleagues on the Supreme Court -- recently placed himself on the appellate panel for the Specialized Court against Corruption (whose predecessor he worked ceaselessly to abolish). The new court appears to be withering on the vine, as the Justice Ministry (which we have heard from several sources is still run by Harabin) is cutting its resources and defense attorneys question its constitutionality and refuse to show up for proceedings.

¶3. (C) Meanwhile, notorious former PM Vladimir Meciar (HZDS Chairman) is proposing a variety of legislative and administrative changes to ensure that the judiciary is controlled by HZDS allies well into the future, even if HZDS doesn't make it into the next government (or parliament -- a real possibility). Justice Minister Viera Petrikova, Harabin's schoolmate, has drafted legislation that would allow individuals to bring claims to the Constitutional Court. Even those legal experts who argue that such legislation could be seen as an expansion of citizen's rights acknowledge that in the current context, this move is more likely about making it easier for those whose cases are pending before the Specialized Court to file claims against its constitutionality. In fact, the attorney for one of the most infamous Meciar-era crooks, Jozef Majsky, publicly expressed his appreciation for the Ministry's proposal. As former Justice Minister Lipsic recently put it,

the Mafioso in Slovakia are rejoicing at these developments. They should be: more and more, what passes for justice here appears to be on their side. End Introduction and Summary.

The Purge Continues

14. (U) As we reported shortly after Harbin's election (ref b), it was widely expected in judicial circles that there would be a purge of those judges who had spoken out against his election. Since then, three of these judges, including two well-respected former Chief Justices, have been suspended or are under investigation. Others have received intimidating letters suggesting that they would be targeted for unspecified wrongdoing. In the case of Supreme Court Justice Pavel Paluda and Regional Court Justice Jana Dubovcova, the charges do not stem from any misconduct in the course of duty, but accusations that they have breached a judge's unwritten obligation to refrain from statements or actions that could affect the respect and dignity of another judge, or endanger public trust in the independent judiciary.

15. (U) Also in Harabin's line of sight are his two immediate predecessors, former Chief Justice Karabin and acting Chief Justice Majchrak, who served as interim Chief Justice in 2003, after Harabin's installation was blocked by a lawsuit that was upheld by the constitutional court. During Majchrak's tenure, several reforms that Harabin had fought were put into place, including an electronic system for random case assignments to minimize corruption and conflicts of interest. (Note: according to a recent expose in the economic weekly Trend, the head of the office which manages the supposedly

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random electronic case assignment and 12 members of his staff were recently fired. Harabin is said to have the password to the system, and the ability -- with the help of newly-hired and pliant staff -- to access and tamper with it undetected.)

16. (U) More recently, Majchrak was one of six judges to publish editorials in Slovak weekly Tyzden arguing against Harabin's election. The proximate cause of Majchrak's suspension was his participation in a three-person panel dealing with the prosecution of alleged underworld figure. Due to a failure on the part of the panel's chair-- not Majchrak -- to file paperwork, the suspect was released from custody. Majchrak learned about his suspension from the media.

17. (U) In Karabin's Case, Harabin threatened in a television interview shortly after his election that 'the criminal prosecution should be interested in Karabin because invoices totaling 17 million crowns were missing' from the period of his tenure as Chief Justice. (Comment: as far as we can discern from talking to multiple reliable sources, the charge is not credible.) During the same interview, Harabin -- defying all notions of judicial decorum -- accused the NGO Fair Play Alliance, which led the campaign against his election, of fraud and suggested that prosecutors 'follow the activities of this organization.' He also called the Vice Chair of the Law Department at the Slovak Academy of Sciences a liar, because he had questioned the legitimacy of Harabin's election to his current position because 8 of the 18 members of the body which elected him (the Judicial Council) were either directly subordinate to Harabin or had been appointed by him.

¶18. (U) Everyone expects the purge to continue, but despite the anxiety this knowledge engenders, more judges are speaking out and actively considering how to fight back against the inequities -- and some say, illegalities -- in the judicial disciplinary system and the blatant -- and some say, unconstitutional -- nature of Harabin's continuing power grab.

¶19. (U) However, judges with whom we have spoken are divided about how to address the deepening crisis. This split was clearly illustrated in the refusal of a leading reform judge, Jana Dubovcova, to sign a recent 'open letter' (emailed to INL/C and CE) from 15 judges to Slovakia's top officials expressing concern about the increasing misuse of disciplinary proceedings as a tool to punish judges critical of Justice Harabin. Dubovcova stated in an op-ed that there is no point in appealing to the President, the Prime Minister or the Judicial Council, because they have repeatedly demonstrated -- through their steadfast support for Harabin -- where they stand. Instead, Dubovcova called on other judges to protest against what one commentator calls Harabin's effort to 'pull the judiciary out of the constitutional and democratic system.'

¶10. (U) One day after Dubovcova's commentary was published, she learned that a disciplinary action would be filed against her 'for her public statements.' On September 25, the media confirmed that Dubovcova is facing removal from the bench for "intentionally violating fundamental obligations of a judge to refrain from any acts in his/her civic life that could impair the authority and dignity of a judge's function." We subsequently learned from Dubovcova that not only is she facing sanctions, but that she was suspended immediately. The suspension order, signed by Justice Minister Petrikova, cites Dubovcova's call on members of the Judicial Council not to elect Harabin as Chief Justice as one of the reasons for her immediate suspension. As of today, Dubovcova will be permitted to enter the court only to gather her personal belongings, after which she is banned from the premises. Her salary will be reduced by 30-50 percent.

¶11. (U) In contrast to Dubovcova, some of the country's other top judges have told us that given the current balance of power, there is no point in doing anything now other than 'trying to

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survive decently.' According to these voices, until there is another 'reform' government in place that is willing to make significant changes in the judiciary, there is no point in appeals or protests or tinkering on the margins with training or judicial exchanges. They argue that the prospect of legislative remedies under the current Smer/SNS/HZDS coalition is non-existent.

¶12. (U) Despite the difference in opinion and the relatively small number of Slovak judges who are willing to speak out, the brutality and transparency of the ongoing purge has captured the growing attention of MPs, NGOS, the media and foreign embassies. There have been at least small acts of resistance even among the governing coalition to Harabin and Meciar's attempts to concentrate even more power in the hands of HZDS appointees. Most recently, Vladimir Meciar's attempt to nominate 10

candidates to fill the disciplinary senates was not approved by Parliament and consideration of Harabin-drafted legislation to strengthen his position, that of Chairman of the Judicial Council, at the expense of the Justice Ministry was postponed until the October session of Parliament.

¶13. (C) Although we have been told by Smer MPs that they are uncomfortable with Harabin, they don't seem willing to do more than throw minor or temporary roadblocks in his path. According to an MP who participated in a September 16 meeting of Parliament's constitutional committee convoked by opposition members to discuss the misuse of disciplinary actions against judges, Smer and other coalition MPs appeared not to know about the cases, and moreover did not want to discuss them. Smer MPs accused the opposition of 'overdramatizing' the situation, and claimed that systemic problems cannot be deduced from just a few cases. (Comment: we are aware of at least 12 cases of disciplinary actions which appear to be inconsistent with the law. Of these, seven judges were immediately suspended from function. End Comment.) In a recent meeting with FM Lajcak, Charge raised concerns about the judiciary. FM Lajcak responded that his information came from the Slovak media, which he dubbed 'horrible.' He added that although he is not personally a Harabin fan, he is probably not as bad as the media makes him out to be. No one in the coalition is willing to acknowledge the depth of the problem, let alone tackle it.

Time to Act

¶14. (U) Former Justice Ministers and opposition MPs Lucia Zitnanska and Daniel Lipsic, however, have begun to formulate proposals to reform the judiciary. Lipsic suggests public participation in the election of judges and members of the judicial councils, so that these individuals are accountable to the citizenry. In Zitnanska's view, the problems run so deep that what is needed -- in addition to new legislation and rules governing the work of the judicial council and disciplinary senates -- is a wholesale cleaning out of the judiciary. One mechanism for achieving this goal would be the creation of a fund that would be used to buy out senior (read: unreconstructed) judges. Early retirement of at least some judges could pave the way for change.

¶15. (U) This is a radical solution, but in our discussions with many judges and those such as Zitnanska, who were the architects of significant judicial reforms early in the decade, the fact that this was not done in concert with those reforms has turned out to be a fatal flaw. Many of the changes which were put into place to minimize corruption and improve court efficiency, e.g., random electronic case assignments, the creation of a special court against corruption, and the reduction of the number of small courts, have been undone or undermined during the last three years. Furthermore, the very reforms called for by the European Union and other to foster the independence of the judiciary are now being misused by those who originally opposed them to create a third branch which is not only independent, but also unaccountable and untouchable.

¶16. (U) In addition to Zitnanska and Lipsic's increasingly vocal efforts, leading NGOs, including the Open Society Foundation, Transparency International, and Via Iuris are

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working on projects to bring to the public's attention the

problems in the judiciary and to promote expert dialogue on potential solutions. Embassy Bratislava is supporting several of these projects with small grants from our Public Affairs funds. We have already heard from several U.S. and other foreign investors that deficiencies and corruption in the judiciary are a serious concern. Thus, we have a very immediate reason for seeking creative ways -- with few financial resources-- to promote improvements in the Slovak judicial system.

Comment and Conclusion

¶17. (C) We do not use the word 'purge' lightly. But we and other like-minded diplomatic missions have been repeatedly shocked by the blatant misconduct of the highest officials in the judiciary and the acquiescence, if not active support, of the current political elite in this abuse of power. The UK Ambassador (please protect) will be speaking with members of the UK Judiciary and the Foreign Office about the situation during consultations in London next week. Slovakia is a NATO Ally and a member of the EU. As such, it expects to be treated with the respect that derives from these associations. We are Slovakia's partner in NATO and a long-time supporter of its democratic transition and development. Although we may no longer have the carrots and sticks that we possessed as Slovakia worked toward accession to key Euro-Atlantic institutions, we do have the right as fellow members of these organizations, e.g., the UN, OSCE, OECD, and GRECO, to ask that Slovakia make a good faith effort to adhere to its international rule of law commitments.

¶18. (C) High-level government corruption, such as we have witnessed here in recent years, combined with the evisceration of the judiciary, is undermining Slovakia's reputation as a reliable partner. If past experience is a guide, PM Fico will be reluctant to take any strong steps against Harabin. We can only speculate what sway Harabin and Meciar hold over Fico and Co. But, for whatever reasons, to the detriment of Slovakia's citizens and its Allies, they appear to have a lock-grip on the institutions entrusted with upholding rule of law.

¶19. (C) Only significant outside pressure, e.g., from the European Commission, seems to have any real impact in moderating the excesses of this government. The Slovaks are still reeling from the international brouhaha over the language law, and more and more European media outlets are writing none-too-complimentary pieces on the country. Meanwhile, as election season shifts into high gear, the latest polls show that the preferences of the PM's party have fallen 10 percentage points. Several analysts attribute the drop directly to concerns about government corruption and dissatisfaction with coalition partners SNS and HZDS.

¶20. (C) Fico is trying, for the sake of appearances, to demonstrate that he is tough on corruption, e.g., by taking the Environment Ministry away from SNS. But he has been utterly silent on the judiciary. His partners, including U.S. interlocutors need to let him know that we see what is transpiring and how dangerous it is. This is the only way in which the nascent coalition of judges, NGOs, MPs and concerned citizens can have a least some chance of being heard.

EDDINS